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**HOUSE BILL 126**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

William "Ed" Boykin

**FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**AN ACT**

**RELATING TO TAXATION; REORGANIZING DEFINITION SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 7-1-55 NMSA 1978 (being Laws 1975, Chapter 251, Section 3, as amended) is amended to read:**

**"7-1-55. CONTRACTOR'S BOND FOR GROSS RECEIPTS--TAX--PENALTY. --**

**A. A person engaged in the construction business who does not have a principal place of business in New Mexico and who enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the secretary or the secretary's delegate with a surety bond, or other acceptable security, in a sum**

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1 equivalent to the gross receipts to be paid under the contract  
2 multiplied by the sum of the applicable rate of the gross  
3 receipts tax imposed by Section 7-9-4 NMSA 1978 plus the  
4 applicable rate or rates of tax imposed pursuant to local  
5 option gross receipts taxes to secure payment of the tax  
6 imposed on the gross receipts from the contract and shall  
7 obtain a certificate from the secretary or the secretary's  
8 delegate that the requirements of this subsection have been  
9 met.

10 B. If the total sum to be paid under the contract  
11 is changed by ten percent or more subsequent to the date the  
12 surety bond or other acceptable security is furnished to the  
13 secretary or the secretary's delegate, such person shall  
14 increase or decrease, as the case may be, the amount of the  
15 bond or security within fourteen days after the change.

16 C. If ~~[any]~~ a person fails to comply with  
17 Subsection A or B of this section, the secretary or the  
18 secretary's delegate:

19 (1) may demand of the person by certified mail  
20 or in person that the person comply. Upon the failure of ~~[any]~~  
21 the person to comply within ten days of the date of the mailing  
22 of such demand, the secretary may institute a proceeding to  
23 enjoin the person from doing business as provided in Section  
24 7-1-53 NMSA 1978; or

25 (2) may, when a serious and immediate risk

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1 exists that an amount of tax due or reasonably expected to  
2 become due from [~~such~~] the person on gross receipts from a  
3 prime construction contract will not be paid, request [~~such~~]  
4 the person to comply with Subsections A and B of this section,  
5 and, upon failure immediately to comply, the secretary may,  
6 without further notice of any kind, apply to any district court  
7 of the state for an injunction as provided in Section 7-1-53  
8 NMSA 1978.

9 D. Subsections A, B and C of this section shall not  
10 apply if the total gross receipts to be paid under the  
11 construction contract, including any change in such amount, are  
12 less than fifty thousand dollars (\$50,000).

13 E. [~~"Construction" and "engaging in business" shall~~  
14 ~~have the meanings set forth, respectively, in Subsections C and~~  
15 ~~E of Section 7-9-3 NMSA 1978.~~] As used in this section,  
16 "construction" shall have the meaning set forth in Section  
17 7-9-3.4 NMSA 1978 and "engaging in business" shall have the  
18 meaning set forth in Section 7-9-3.3 NMSA 1978.

19 F. A municipality or other political subdivision of  
20 the state or any agency of the state shall not issue a building  
21 or other construction permit to any person subject to the  
22 requirements of Subsection A of this section without first  
23 having been furnished by the construction contractor with the  
24 certificate from the secretary or the secretary's delegate  
25 specified in Subsection A of this section. Any person who

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1 issues any such permit before receiving the certificate shall  
2 be deemed guilty of a misdemeanor and, upon conviction, be  
3 fined not less than fifty dollars (\$50.00) nor more than one  
4 hundred dollars (\$100) for each offense. "

5 Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978,  
6 Chapter 46, Section 1, as amended by Laws 2002, Chapter 28,  
7 Section 1 and by Laws 2002, Chapter 45, Section 1 and also by  
8 Laws 2002, Chapter 49, Section 1) is amended to read:

9 "7-9-3. DEFINITIONS. -- As used in the Gross Receipts and  
10 Compensating Tax Act:

11 [A. ~~"department" means the taxation and revenue~~  
12 ~~department, the secretary of taxation and revenue or any~~  
13 ~~employee of the department exercising authority lawfully~~  
14 ~~delegated to that employee by the secretary;~~

15 B. ~~"buying" or "selling" means any transfer of~~  
16 ~~property for consideration or any performance of service for~~  
17 ~~consideration;~~

18 C. ~~"construction" means building, altering,~~  
19 ~~repairing or demolishing in the ordinary course of business~~  
20 ~~any:~~

21 (1) ~~road, highway, bridge, parking area or~~  
22 ~~related project;~~

23 (2) ~~building, stadium or other structure;~~

24 (3) ~~airport, subway or similar facility;~~

25 (4) ~~park, trail, athletic field, golf course~~

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1 ~~or similar facility;~~

2 ~~(5) dam, reservoir, canal, ditch or similar~~  
3 ~~facility;~~

4 ~~(6) sewerage or water treatment facility,~~  
5 ~~power generating plant, pump station, natural gas compressing~~  
6 ~~station, gas processing plant, coal gasification plant,~~  
7 ~~refinery, distillery or similar facility;~~

8 ~~(7) sewerage, water, gas or other pipeline;~~

9 ~~(8) transmission line;~~

10 ~~(9) radio, television or other tower;~~

11 ~~(10) water, oil or other storage tank;~~

12 ~~(11) shaft, tunnel or other mining~~

13 ~~appurtenance;~~

14 ~~(12) microwave station or similar facility;~~

15 ~~(13) retaining wall, wall, fence gate or~~  
16 ~~similar structure; or~~

17 ~~(14) similar work;~~

18 ~~"construction" also means:~~

19 ~~(15) leveling or clearing land;~~

20 ~~(16) excavating earth;~~

21 ~~(17) drilling wells of any type, including~~  
22 ~~seismograph shot holes or core drilling; or~~

23 ~~(18) similar work;~~

24 ~~D. "financial corporation" means any savings and~~  
25 ~~loan association or any incorporated savings and loan company,~~

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1 ~~trust company, mortgage banking company, consumer finance~~  
2 ~~company or other financial corporation;~~

3 E. ~~"engaging in business" means carrying on or~~  
4 ~~causing to be carried on any activity with the purpose of~~  
5 ~~direct or indirect benefit, except that:~~

6 (1) ~~"engaging in business" does not include~~  
7 ~~having a worldwide web site as a third party content provider~~  
8 ~~on a computer physically located in New Mexico but owned by~~  
9 ~~another nonaffiliated person; and~~

10 (2) ~~"engaging in business" does not include~~  
11 ~~using a nonaffiliated third party call center to accept and~~  
12 ~~process telephone or electronic orders of tangible personal~~  
13 ~~property or licenses primarily from non-New Mexico buyers,~~  
14 ~~which orders are forwarded to a location outside New Mexico for~~  
15 ~~filling, or to provide services primarily to non-New Mexico~~  
16 ~~customers;~~

17 F. ~~"gross receipts" means the total amount of money~~  
18 ~~or the value of other consideration received from selling~~  
19 ~~property in New Mexico, from leasing property employed in New~~  
20 ~~Mexico, from selling services performed outside New Mexico the~~  
21 ~~product of which is initially used in New Mexico or from~~  
22 ~~performing services in New Mexico. In an exchange in which the~~  
23 ~~money or other consideration received does not represent the~~  
24 ~~value of the property or service exchanged, "gross receipts"~~  
25 ~~means the reasonable value of the property or service~~

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1 ~~exchanged.~~

2 ~~(1) "Gross receipts" includes:~~

3 ~~(a) any receipts from sales of tangible~~  
4 ~~personal property handled on consignment;~~

5 ~~(b) the total commissions or fees~~  
6 ~~derived from the business of buying, selling or promoting the~~  
7 ~~purchase, sale or leasing, as an agent or broker on a~~  
8 ~~commission or fee basis, of any property, service, stock, bond~~  
9 ~~or security;~~

10 ~~(c) amounts paid by members of any~~  
11 ~~cooperative association or similar organization for sales or~~  
12 ~~leases of personal property or performance of services by such~~  
13 ~~organization;~~

14 ~~(d) amounts received from transmitting~~  
15 ~~messages or conversations by persons providing telephone or~~  
16 ~~telegraph services; and~~

17 ~~(e) amounts received by a New Mexico~~  
18 ~~florist from the sale of flowers, plants or other products that~~  
19 ~~are customarily sold by florists where the sale is made~~  
20 ~~pursuant to orders placed with the New Mexico florist that are~~  
21 ~~filled and delivered outside New Mexico by an out-of-state~~  
22 ~~florist.~~

23 ~~(2) "Gross receipts" excludes:~~

24 ~~(a) cash discounts allowed and taken;~~

25 ~~(b) New Mexico gross receipts tax;~~

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1 ~~governmental gross receipts tax and leased vehicle gross~~  
2 ~~receipts tax payable on transactions for the reporting period;~~

3 ~~(c) taxes imposed pursuant to the~~  
4 ~~provisions of any local option gross receipts tax that is~~  
5 ~~payable on transactions for the reporting period;~~

6 ~~(d) any gross receipts or sales taxes~~  
7 ~~imposed by an Indian nation, tribe or pueblo; provided that the~~  
8 ~~tax is approved, if approval is required by federal law or~~  
9 ~~regulation, by the secretary of the interior of the United~~  
10 ~~States; and provided further that the gross receipts or sales~~  
11 ~~tax imposed by the Indian nation, tribe or pueblo provides a~~  
12 ~~reciprocal exclusion for gross receipts, sales or gross~~  
13 ~~receipts-based excise taxes imposed by the state or its~~  
14 ~~political subdivisions;~~

15 ~~(e) any type of time-price differential;~~

16 ~~(f) amounts received solely on behalf of~~  
17 ~~another in a disclosed agency capacity; and~~

18 ~~(g) amounts received by a New Mexico~~  
19 ~~florist from the sale of flowers, plants or other products that~~  
20 ~~are customarily sold by florists where the sale is made~~  
21 ~~pursuant to orders placed with an out-of-state florist for~~  
22 ~~filling and delivery in New Mexico by a New Mexico florist.~~

23 ~~(3) When the sale of property or service is~~  
24 ~~made under any type of charge, conditional or time-sales~~  
25 ~~contract or the leasing of property is made under a leasing~~

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1 ~~contract, the seller or lessor may elect to treat all receipts,~~  
2 ~~excluding any type of time price differential, under such~~  
3 ~~contracts as gross receipts as and when the payments are~~  
4 ~~actually received. If the seller or lessor transfers his~~  
5 ~~interest in any such contract to a third person, the seller or~~  
6 ~~lessor shall pay the gross receipts tax upon the full sale or~~  
7 ~~leasing contract amount, excluding any type of time price~~  
8 ~~differential;~~

9 G. ~~"manufacturing" means combining or processing~~  
10 ~~components or materials to increase their value for sale in the~~  
11 ~~ordinary course of business, but does not include construction;~~

12 H. ~~"person" means:~~

13 (1) ~~an individual, estate, trust, receiver,~~  
14 ~~cooperative association, club, corporation, company, firm,~~  
15 ~~partnership, limited liability company, limited liability~~  
16 ~~partnership, joint venture, syndicate or other entity,~~  
17 ~~including any gas, water or electric utility owned or operated~~  
18 ~~by a county, municipality or other political subdivision of the~~  
19 ~~state; or~~

20 (2) ~~a national, federal, state, Indian or~~  
21 ~~other governmental unit or subdivision, or an agency,~~  
22 ~~department or instrumentality of any of the foregoing;~~

23 I. ~~"property" means real property, tangible~~  
24 ~~personal property, licenses, franchises, patents, trademarks~~  
25 ~~and copyrights. Tangible personal property includes~~

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1 ~~electricity and manufactured homes;~~

2 ~~J. "leasing" means an arrangement whereby, for a~~  
3 ~~consideration, property is employed for or by any person other~~  
4 ~~than the owner of the property, except that the granting of a~~  
5 ~~license to use property is the sale of a license and not a~~  
6 ~~lease;~~

7 ~~K. "service" means all activities engaged in for~~  
8 ~~other persons for a consideration, which activities involve~~  
9 ~~predominantly the performance of a service as distinguished~~  
10 ~~from selling or leasing property. "Service" includes~~  
11 ~~activities performed by a person for its members or~~  
12 ~~shareholders. In determining what is a service, the intended~~  
13 ~~use, principal objective or ultimate objective of the~~  
14 ~~contracting parties shall not be controlling. "Service"~~  
15 ~~includes construction activities and all tangible personal~~  
16 ~~property that will become an ingredient or component part of a~~  
17 ~~construction project. Such tangible personal property retains~~  
18 ~~its character as tangible personal property until it is~~  
19 ~~installed as an ingredient or component part of a construction~~  
20 ~~project in New Mexico. However, sales of tangible personal~~  
21 ~~property that will become an ingredient or component part of a~~  
22 ~~construction project to persons engaged in the construction~~  
23 ~~business are sales of tangible personal property;~~

24 ~~L. "use" or "using" includes use, consumption or~~  
25 ~~storage other than storage for subsequent sale in the ordinary~~

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1 ~~course of business or for use solely outside this state;~~

2 M. ~~"secretary" means the secretary of taxation and~~  
3 ~~revenue or the secretary's delegate;~~

4 N. ~~"manufactured home" means a movable or portable~~  
5 ~~housing structure for human occupancy that exceeds either a~~  
6 ~~width of eight feet or a length of forty feet constructed to be~~  
7 ~~towed on its own chassis and designed to be installed with or~~  
8 ~~without a permanent foundation;~~

9 O. ~~"initial use" or "initially used" means the~~  
10 ~~first employment for the intended purpose and does not include~~  
11 ~~the following activities:~~

12 (1) ~~observation of tests conducted by the~~  
13 ~~performer of services;~~

14 (2) ~~participation in progress reviews,~~  
15 ~~briefings, consultations and conferences conducted by the~~  
16 ~~performer of services;~~

17 (3) ~~review of preliminary drafts, drawings and~~  
18 ~~other materials prepared by the performer of the services;~~

19 (4) ~~inspection of preliminary prototypes~~  
20 ~~developed by the performer of services; or~~

21 (5) ~~similar activities;~~

22 P. ~~"research and development services" means an~~  
23 ~~activity engaged in for other persons for consideration, for~~  
24 ~~one or more of the following purposes:~~

25 (1) ~~advancing basic knowledge in a recognized~~

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1 ~~field of natural science;~~

2 ~~(2) advancing technology in a field of~~  
3 ~~technical endeavor;~~

4 ~~(3) the development of a new or improved~~  
5 ~~product, process or system with new or improved function,~~  
6 ~~performance, reliability or quality, whether or not the new or~~  
7 ~~improved product, process or system is offered for sale, lease~~  
8 ~~or other transfer;~~

9 ~~(4) the development of new uses or~~  
10 ~~applications for an existing product, process or system,~~  
11 ~~whether or not the new use or application is offered as the~~  
12 ~~rationale for purchase, lease or other transfer of the product,~~  
13 ~~process or system;~~

14 ~~(5) analytical or survey activities~~  
15 ~~incorporating technology review, application, trade-off study,~~  
16 ~~modeling, simulation, conceptual design or similar activities,~~  
17 ~~whether or not offered for sale, lease or other transfer; or~~

18 ~~(6) the design and development of prototypes~~  
19 ~~or the integration of systems incorporating advances,~~  
20 ~~developments or improvements included in Paragraphs (1) through~~  
21 ~~(5) of this subsection;~~

22 ~~Q. "local option gross receipts tax" means a tax~~  
23 ~~authorized to be imposed by a county or municipality upon the~~  
24 ~~taxpayer's gross receipts and required to be collected by the~~  
25 ~~department at the same time and in the same manner as the gross~~

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1 ~~receipts tax; "local option gross receipts tax" includes the~~  
2 ~~taxes imposed pursuant to the Municipal Local Option Gross~~  
3 ~~Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax~~  
4 ~~Act, County Local Option Gross Receipts Taxes Act, Local~~  
5 ~~Hospital Gross Receipts Tax Act, County Correctional Facility~~  
6 ~~Gross Receipts Tax Act and such other acts as may be enacted~~  
7 ~~authorizing counties or municipalities to impose taxes on gross~~  
8 ~~receipts, which taxes are to be collected by the department;~~

9 R. ~~"prescription drugs" means insulin and~~  
10 ~~substances that are:~~

11 (1) ~~dispensed by or under the supervision of a~~  
12 ~~licensed pharmacist or by a physician or other person~~  
13 ~~authorized under state law to do so;~~

14 (2) ~~prescribed for a specified person by a~~  
15 ~~person authorized under state law to prescribe the substance;~~  
16 ~~and~~

17 (3) ~~subject to the restrictions on sale~~  
18 ~~contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;~~  
19 ~~and~~

20 S. ~~"construction material" means tangible personal~~  
21 ~~property that becomes or is intended to become an ingredient or~~  
22 ~~component part of a construction project, but "construction~~  
23 ~~material" does not include a replacement fixture when the~~  
24 ~~replacement is not construction or a replacement part for a~~  
25 ~~fixture]~~

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1                   A. "buying" or "selling" means a transfer of  
2 property for consideration or the performance of service for  
3 consideration;

4                   B. "department" means the taxation and revenue  
5 department, the secretary of taxation and revenue or an  
6 employee of the department exercising authority lawfully  
7 delegated to that employee by the secretary;

8                   C. "financial corporation" means any savings and  
9 loan association or any incorporated savings and loan company,  
10 trust company, mortgage banking company, consumer finance  
11 company or other financial corporation;

12                   D. "initial use" or "initially used" means the  
13 first employment for the intended purpose and does not include  
14 the following activities:

15                           (1) observation of tests conducted by the  
16 performer of services;

17                           (2) participation in progress reviews,  
18 briefings, consultations and conferences conducted by the  
19 performer of services;

20                           (3) review of preliminary drafts, drawings and  
21 other materials prepared by the performer of the services;

22                           (4) inspection of preliminary prototypes  
23 developed by the performer of services; or

24                           (5) similar activities;

25                   E. "leasing" means an arrangement whereby, for a

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1 consideration, property is employed for or by any person other  
2 than the owner of the property, except that the granting of a  
3 license to use property is the sale of a license and not a  
4 lease;

5 F. "local option gross receipts tax" means a tax  
6 authorized to be imposed by a county or municipality upon the  
7 taxpayer's gross receipts and required to be collected by the  
8 department at the same time and in the same manner as the gross  
9 receipts tax; "local option gross receipts tax" includes the  
10 taxes imposed pursuant to the Municipal Local Option Gross  
11 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax  
12 Act, County Local Option Gross Receipts Taxes Act, Local  
13 Hospital Gross Receipts Tax Act, County Correctional Facility  
14 Gross Receipts Tax Act and such other acts as may be enacted  
15 authorizing counties or municipalities to impose taxes on gross  
16 receipts, which taxes are to be collected by the department;

17 G. "manufactured home" means a movable or portable  
18 housing structure for human occupancy that exceeds either a  
19 width of eight feet or a length of forty feet constructed to be  
20 towed on its own chassis and designed to be installed with or  
21 without a permanent foundation;

22 H. "manufacturing" means combining or processing  
23 components or materials to increase their value for sale in the  
24 ordinary course of business, but does not include construction;

25 I. "person" means:

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1                   (1) an individual, estate, trust, receiver,  
2 cooperative association, club, corporation, company, firm,  
3 partnership, limited liability company, limited liability  
4 partnership, joint venture, syndicate or other entity,  
5 including any gas, water or electric utility owned or operated  
6 by a county, municipality or other political subdivision of the  
7 state; or

8                   (2) a national, federal, state, Indian or  
9 other governmental unit or subdivision, or an agency,  
10 department or instrumentality of any of the foregoing;

11                   J. "property" means real property, tangible  
12 personal property, licenses, franchises, patents, trademarks  
13 and copyrights. Tangible personal property includes  
14 electricity and manufactured homes;

15                   K. "research and development services" means an  
16 activity engaged in for other persons for consideration, for  
17 one or more of the following purposes:

18                   (1) advancing basic knowledge in a recognized  
19 field of natural science;

20                   (2) advancing technology in a field of  
21 technical endeavor;

22                   (3) developing a new or improved product,  
23 process or system with new or improved function, performance,  
24 reliability or quality, whether or not the new or improved  
25 product, process or system is offered for sale, lease or other

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1 transfer;

2 (4) developing new uses or applications for an  
3 existing product, process or system, whether or not the new use  
4 or application is offered as the rationale for purchase, lease  
5 or other transfer of the product, process or system;

6 (5) developing analytical or survey activities  
7 incorporating technology review, application, trade-off study,  
8 modeling, simulation, conceptual design or similar activities,  
9 whether or not offered for sale, lease or other transfer; or

10 (6) designing and developing prototypes or  
11 integrating systems incorporating the advances, developments or  
12 improvements included in Paragraphs (1) through (5) of this  
13 subsection;

14 L. "secretary" means the secretary of taxation and  
15 revenue or the secretary's delegate;

16 M "service" means all activities engaged in for  
17 other persons for a consideration, which activities involve  
18 predominantly the performance of a service as distinguished  
19 from selling or leasing property. "Service" includes  
20 activities performed by a person for its members or  
21 shareholders. In determining what is a service, the intended  
22 use, principal objective or ultimate objective of the  
23 contracting parties shall not be controlling. "Service"  
24 includes construction activities and all tangible personal  
25 property that will become an ingredient or component part of a

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1 construction project. Such tangible personal property retains  
2 its character as tangible personal property until it is  
3 installed as an ingredient or component part of a construction  
4 project in New Mexico. However, sales of tangible personal  
5 property that will become an ingredient or component part of a  
6 construction project to persons engaged in the construction  
7 business are sales of tangible personal property; and

8 N. "use" or "using" includes use, consumption or  
9 storage other than storage for subsequent sale in the ordinary  
10 course of business or for use solely outside this state. "

11 Section 3. A new section of the Gross Receipts and  
12 Compensating Tax Act, Section 7-9-3.1 NMSA 1978, is enacted to  
13 read:

14 "7-9-3.1. [NEW MATERIAL] DEFINITION-- GROSS RECEIPTS. --

15 A. As used in the Gross Receipts and Compensating  
16 Tax Act:

17 (1) "gross receipts" means the total amount of  
18 money or the value of other consideration received from selling  
19 property in New Mexico, from leasing property employed in New  
20 Mexico, from selling services performed outside New Mexico, the  
21 product of which is initially used in New Mexico, or from  
22 performing services in New Mexico. In an exchange in which the  
23 money or other consideration received does not represent the  
24 value of the property or service exchanged, "gross receipts"  
25 means the reasonable value of the property or service

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1 exchanged;

2 (2) "gross receipts" includes:

3 (a) any receipts from sales of tangible  
4 personal property handled on consignment;

5 (b) the total commissions or fees  
6 derived from the business of buying, selling or promoting the  
7 purchase, sale or lease, as an agent or broker on a commission  
8 or fee basis, of any property, service, stock, bond or  
9 security;

10 (c) amounts paid by members of any  
11 cooperative association or similar organization for sales or  
12 leases of personal property or performance of services by such  
13 organization;

14 (d) amounts received from transmitting  
15 messages or conversations by persons providing telephone or  
16 telegraph services;

17 (e) amounts received by a New Mexico  
18 florist from the sale of flowers, plants or other products that  
19 are customarily sold by florists where the sale is made  
20 pursuant to orders placed with the New Mexico florist that are  
21 filled and delivered outside New Mexico by an out-of-state  
22 florist; and

23 (f) the receipts of a home service  
24 provider from providing mobile telecommunications services to  
25 customers whose place of primary use is in New Mexico if: 1)

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1 the mobile telecommunications services originate and terminate  
2 in the same state, regardless of where the services originate,  
3 terminate or pass through; and 2) the charges for mobile  
4 telecommunications services are billed by or for a customer's  
5 home service provider and are deemed provided by the home  
6 service provider. For the purposes of this section, "home  
7 service provider", "mobile telecommunications services",  
8 "customer" and "place of primary use" have the meanings given  
9 in the federal Mobile Telecommunications Sourcing Act; and

10 (3) "gross receipts" excludes:

11 (a) cash discounts allowed and taken;

12 (b) New Mexico gross receipts tax,  
13 governmental gross receipts tax and leased vehicle gross  
14 receipts tax payable on transactions for the reporting period;

15 (c) taxes imposed pursuant to the  
16 provisions of any local option gross receipts tax that is  
17 payable on transactions for the reporting period;

18 (d) any gross receipts or sales taxes  
19 imposed by an Indian nation, tribe or pueblo; provided that the  
20 tax is approved, if approval is required by federal law or  
21 regulation, by the secretary of the interior of the United  
22 States; and provided further that the gross receipts or sales  
23 tax imposed by the Indian nation, tribe or pueblo provides a  
24 reciprocal exclusion for gross receipts, sales or gross  
25 receipts-based excise taxes imposed by the state or its

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1 political subdivisions;

2 (e) any type of time-price differential;

3 (f) amounts received solely on behalf of  
4 another in a disclosed agency capacity; and

5 (g) amounts received by a New Mexico  
6 florist from the sale of flowers, plants or other products that  
7 are customarily sold by florists where the sale is made  
8 pursuant to orders placed with an out-of-state florist for  
9 filling and delivery in New Mexico by a New Mexico florist.

10 B. When the sale of property or service is made  
11 under any type of charge, conditional or time-sales contract or  
12 the leasing of property is made under a leasing contract, the  
13 seller or lessor may elect to treat all receipts, excluding any  
14 type of time-price differential, under such contracts as gross  
15 receipts as and when the payments are actually received. If  
16 the seller or lessor transfers his interest in any such  
17 contract to a third person, the seller or lessor shall pay the  
18 gross receipts tax upon the full sale or leasing contract  
19 amount, excluding any type of time-price differential."

20 Section 4. Section 7-9-3.3 NMSA 1978 (being Laws 2002,  
21 Chapter 18, Section 1) is repealed and a new Section 7-9-3.3  
22 NMSA 1978 is enacted to read:

23 "7-9-3.3. [NEW MATERIAL] DEFINITION--ENGAGING IN  
24 BUSINESS.--As used in the Gross Receipts and Compensating Tax  
25 Act, "engaging in business" means carrying on or causing to be

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1 carried on any activity with the purpose of direct or indirect  
2 benefit, except that:

3 A. "engaging in business" does not include having a  
4 worldwide web site as a third-party content provider on a  
5 computer physically located in New Mexico but owned by another  
6 nonaffiliated person; and

7 B. "engaging in business" does not include using a  
8 nonaffiliated third-party call center to accept and process  
9 telephone or electronic orders of tangible personal property or  
10 licenses primarily from non-New Mexico buyers, which orders are  
11 forwarded to a location outside New Mexico for filling, or to  
12 provide services primarily to non-New Mexico customers. "

13 Section 5. A new section of the Gross Receipts and  
14 Compensating Tax Act, Section 7-9-3.4 NMSA 1978, is enacted to  
15 read:

16 "7-9-3.4. [NEW MATERIAL] DEFINITIONS-- CONSTRUCTION AND  
17 CONSTRUCTION MATERIALS.--As used in the Gross Receipts and  
18 Compensating Tax Act:

19 A. "construction" means:

20 (1) the building, altering, repairing or  
21 demolishing in the ordinary course of business any:

22 (a) road, highway, bridge, parking area  
23 or related project;

24 (b) building, stadium or other  
25 structure;

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1 (c) airport, subway or similar facility;

2 (d) park, trail, athletic field, golf  
3 course or similar facility;

4 (e) dam, reservoir, canal, ditch or  
5 similar facility;

6 (f) sewerage or water treatment  
7 facility, power generating plant, pump station, natural gas  
8 compressing station, gas processing plant, coal gasification  
9 plant, refinery, distillery or similar facility;

10 (g) sewerage, water, gas or other  
11 pipeline;

12 (h) transmission line;

13 (i) radio, television or other tower;

14 (j) water, oil or other storage tank;

15 (k) shaft, tunnel or other mining  
16 appurtenance;

17 (l) microwave station or similar  
18 facility;

19 (m) retaining wall, wall, fence, gate or  
20 similar structure; or

21 (n) similar work;

22 (2) the leveling or clearing of land;

23 (3) the excavating of earth;

24 (4) the drilling of wells of any type,

25 including seismograph shot holes or core drilling; or

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1 (5) similar work; and

2 B. "construction material" means tangible personal  
3 property that becomes or is intended to become an ingredient or  
4 component part of a construction project, but "construction  
5 material" does not include a replacement fixture when the  
6 replacement is not construction or a replacement part for a  
7 fixture. "

8 Section 6. Section 7-9-54 NMSA 1978 (being Laws 1969,  
9 Chapter 144, Section 44, as amended) is amended to read:

10 "7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL  
11 GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

12 A. Receipts from selling tangible personal property  
13 to the United States or New Mexico or [~~any~~] a governmental  
14 unit, [~~or~~] subdivision, agency, department or instrumentality  
15 thereof may be deducted from gross receipts or from  
16 governmental gross receipts. Unless contrary to federal law,  
17 the deduction provided by this subsection does not apply to:

18 (1) receipts from selling metalliferous  
19 mineral ore;

20 (2) receipts from selling tangible personal  
21 property that is or will be incorporated into a metropolitan  
22 redevelopment project created under the Metropolitan  
23 Redevelopment Code;

24 (3) receipts from selling construction  
25 material; or

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1 (4) that portion of the receipts from  
2 performing a "service", as defined in Subsection [~~K~~] M of  
3 Section 7-9-3 NMSA 1978, that reflects the value of tangible  
4 personal property utilized or produced in performance of such  
5 service.

6 B. Receipts from selling tangible personal property  
7 for any purpose to an Indian tribe, nation or pueblo or [~~any~~] a  
8 governmental unit, subdivision, agency, department or  
9 instrumentality thereof for use on Indian reservations or  
10 pueblo grants may be deducted from gross receipts or from  
11 governmental gross receipts.

12 C. When a seller, in good faith, deducts receipts  
13 for tangible personal property sold to the state or [~~any~~] a  
14 governmental unit, subdivision, agency, department or  
15 instrumentality thereof, after receiving written assurances  
16 from the buyer's representative that the property sold is not  
17 construction material, the department is precluded from  
18 asserting in a later assessment or audit that the receipts are  
19 not deductible pursuant to Paragraph (3) of Subsection A of  
20 this section. "

21 Section 7. Section 7-9-73.2 NMSA 1978 (being Laws 1998,  
22 Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4) is  
23 amended to read:

24 "7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL  
25 GROSS RECEIPTS TAX--PRESCRIPTION DRUGS.--

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A. Receipts from the sale of prescription drugs may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance;  
and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

Section 8. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2003.